HOW FEDERAL QUESTION IS PRESENTED.

These proceedings were begun as a Petition for a Writ of Mandamus brought directly in the Court of Appeals of Kentucky (R. 1; *infra* App. B, pp. 1-6). At the very outset the federal questions were specifically raised as the major basis for the exercise of the Writ (R. 3; *infra* App. B, p. 4). Subsequently, in its Petition for Rehearing (R. 48; App. C, pp. 1-85, *infra*) this Petitioner specifically called to the attention of the Court of Appeals of Kentucky the fact that the federal questions had been posed from the outset and asked that court to pass on these questions. (R. 48 at 2, 4, 6; *infra* App. C, pp. 2, 4, 6).

REASONS FOR GRANTING THE WRIT.

This case presents a clear conflict with the firmly established constitutional rights of a public trial and freedom of the press.

If the action of the Kentucky Court of Appeals is undisturbed it means that, in Kentucky at least, essential steps in the administration of criminal law may be hidden from the public. Here, in a case involving the most serious offense against public morality and community mores we are asked to accept a result based upon standards and information which are kept secret from us. Not only has an individual of subnormal mentality received two life terms of imprisonment, but the community itself is faced with an inexplicable shift from death sentences arrived at by a jury

after a public open trial, to life sentences [which in Kentucky can mean freedom after eight years] imposed on the basis of secret proceedings in chambers.

The judicial process cannot long survive when such proceedings are the basis for the administration of justice. This Court has repeatedly stated the importance of public attendance upon a criminal trial and has expressed this in terms of the constitutional guarantees of the public right to a public trial and of freedom of the press. The instant case will give this Court an opportunity to restate these important principles in a context not previously presented and in a manner to clearly establish the public right in a public trial.

1. The decision of the Court below in the instant case is directly in conflict with the doctrines of the public right in the constitutional guarantee of a public trial announced by this Court in *In re Oliver*, 333 U. S. 257 (1948), *Craig* v. *Harney*, 331 U. S. 367 (1946), and *Maryland* v. *Baltimore Radio Show*, 338 U. S. 912 (1949).

In those cases this Court stated that a public trial is required of State Courts by the due process clause of the Fourteenth Amendment and that one of the safeguards of this right is the right of the public to know what goes on in its Courts. (R. 48 at 70 & 71; *infra*, App. C, pp. 70, 71).

The proceeding sanctioned by The Court of Appeals of Kentucky in this case is the absolute antithesis of these requirements and unless reversed by this Court can only lead to the growth of public distrust of the judicial process.

2. The decision of the Court below in the instant case is directly in conflict with decisions of this Court on the right of freedom of the press as set forth in *Grosjean* v. *American Press Co.*, 297 U. S. 233 (1936) and *Craig* v. *Harney*, 331 U. S. 367 at 374 (1946).

In these cases this Court pointed out the importance to the operation of democratic government of an informed society resulting from a free press. (R. 48 at 76-80; *infra*, App. C, pp. 76-80).

These points are fully developed with citation of relevant authorities in the Petition for Rehearing filed in the Court of Appeals of Kentucky. For the convenience of this Court, the Petition for Rehearing is printed in its entirety in the Appendix herein. (*Infra*, App. C, 1-84). Particular attention is directed to the authorities and argument set out under points E and F at pages 64-80 of the Petition for Rehearing, *infra*.

CONCLUSION.

For the foregoing reasons, because of the importance of this question to the sound administration of justice, and because of the fundamental issues of public trial and freedom of the press involved, this Petition for a Writ of Certiorari should be granted. Failure to grant the Petition will allow a trial judge to make a mockery of the right to a public trial and to act as the absolute censor of what portions of the record of a trial shall be subject to review by the press and public. This is particularly loathsome where, as here, no justification is offered for the censorship other than

the exercise of a particular judge's discretion. Such a condition is clearly interdicted by the Constitution and should be subjected to the salutary safeguards of review, analysis and ruling which can only be accomplished by granting the Writ of Certiorari.

Respectfully submitted,

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September 19, 1960.

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APPENDIX A

APPENDIX A.

Fourteenth Amendment to the Constitution of the United States, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX B